26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 167,168, 446, 481; 1.446–1, 1.481–1.)

Rev. Proc. 2002–27

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor method of accounting for the cost of original and replacement tires for certain vehicles (original tire capitalization method) used in various business activities. This revenue procedure also explains how a taxpayer can obtain automatic consent from the Commissioner of Internal Revenue to change to the original tire capitalization method, including rules relating to the limitations, terms, and conditions the Commissioner deems necessary to make the change. In addition, this revenue procedure provides an optional procedure for a taxpayer to settle open taxable years using the original tire capitalization method if the taxpayer's treatment of original and replacement tire expenditures is an issue under consideration in examination, before an area appeals office, or before the United States Tax Court (Tax Court) or is an issue pending in examination.

SECTION 2. BACKGROUND

.01 Section 162 of the Internal Revenue Code allows a deduction for all ordinary and necessary business expenses paid or incurred during the taxable year in carrying on any trade or business. However, § 263(a) prohibits a deduction for capital expenditures. Capital expenditures include the cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year. Section 1.263(a)–2(a) of the Income Tax Regulations. These capital expenditures are subject to the allowance for depreciation.

.02 Section 167(a) provides a depreciation allowance for the exhaustion, wear and tear of property used in a trade or business or held for the production of income. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section prescribes two methods of accounting for determining depreciation allowances: (1) the general depreciation system (GDS) in § 168(a); and (2) the alternative depreciation system (ADS) in §168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention. For purposes of either GDS or ADS, the applicable recovery period is determined by reference to class life or by statute.

Rev. Proc. 87–56 (1987–2 C.B. 674) sets forth the class lives of property that are necessary to compute the depreciation allowances under § 168. The revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4 that consist of specific assets used in all business activities; and (2) asset classes 01.1 through 80.0 that consist of assets used in specific business activities.

.03 Several court decisions and revenue rulings have considered the expense-versus-capital expenditure issue regarding truck tires. In *W.H. Tompkins Co. v. Commissioner*, 47 B.T.A. 292 (1942), the court stated that the recovery of the cost of short-lived truck tires and tubes should not be associated with the depreciation of much longer-lived trucks because the tires and tubes are easily separable from the truck and are not a part of the truck's mechanism. The court held, therefore, that the cost of truck tires and tubes consumable within the taxable year are currently deductible as an expense in the year of purchase. *See also Zelco, Inc. v. Commissioner*, 331 F.2d 418, 421 (1st Cir. 1964) (a lessor of trailers and tractors used by interstate motor carriers was not required to treat those vehicles' tires as a part of the leased vehicles, and the cost of trailer and tractor tires and tubes with an average useful life of 12 months could be deducted currently); *Interstate Truck Service, Inc. v. Commissioner*, T.C. Memo. 1958–219 (a taxpayer in the motor freight transportation business can currently deduct the cost of tires and tubes on trucks, tractors, and trailers because on average all of the tires and tubes were consumable in less than one year). In Rev. Rul. 59–249 (1959–2 C.B. 55), the Service announced that it would follow the holdings of *Tompkins* and *Interstate* for tires purchased on new commercial trucking equipment and used in motor freight transportation. Rev. Rul. 68–134 (1968–1 C.B. 63) discusses *Zelco* and holds that the principles of Rev. Rul. 59–249 are applicable to tires in the case of a taxpayer who is a purchaser-lessor of new commercial trucking equipment.

Accordingly, truck, trailer, and tractor tires are not treated as part of the vehicle for depreciation purposes. Rather, these tires are considered to be separate assets and, as such, their cost is currently deductible by a taxpayer provided they are consumable in less than one year. However, the cost of truck, trailer, and tractor tires with an average useful life to a taxpayer of more than one year cannot be currently deducted as an operating expense. Their cost must be capitalized and recovered through depreciation. Because truck, trailer, and tractor tires are not considered part of the vehicle for depreciation purposes, they are not associated with any of the specific transportation assets included in the specific asset classes of Rev. Proc. 87–56 (that is, asset classes 00.241, 00.242, 00.26, and 00.27). Therefore, in accordance with § 168 and Rev. Proc. 87–56, all truck, trailer, and tractor tires that must be capitalized, whether original or replacement, are depreciated as assets used in specific business activities (that is, asset classes 01.1 through 80.0 of Rev. Proc. 87–56). For example, if a taxpayer's business activity is described in asset class 42.0, Motor Transport—Freight, original and replacement truck, trailer, and tractor tires, like the other assets in this class, would have a 5-year recovery period for GDS purposes and an 8-year recovery period for ADS purposes.

.04 Under § 446(b), the Commissioner has broad authority to determine whether a method of accounting clearly reflects income. If a taxpayer's method of accounting does not clearly reflect income, the computation of taxable income must be made under a method that, in the opinion of the Secretary, does clearly reflect income. *See Thor Power Tool Co. v. Commissioner*, 439 U.S. 522 (1979) (1979–1 C.B. 167); *Commissioner v. Hansen*, 360 U.S. 446 (1959) (1959–2 C.B. 460); § 1.446–1(c)(2)(ii).

.05 Section 446(e) and § 1.446–1(e) provide that, except as otherwise provided, a taxpayer must secure the consent

of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting.

.06 Since the issuance of the court decisions and revenue rulings previously discussed, the quality of tires has improved significantly. Most tires manufactured in recent years have useful lives in excess of a year, although some taxpayers, because of the nature of their business activities, still consume their tires within a year. To minimize disputes regarding the useful lives of original tires and replacement tires for certain vehicles, the Internal Revenue Service will permit a taxpayer that complies with the requirements of this revenue procedure to account for the cost of original tires and replacement tires for certain vehicles using the original tire capitalization method described in section 5 of this revenue procedure.

SECTION 3. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 *Qualifying Vehicle*. A qualifying vehicle is a vehicle for which depreciation is determined under § 168 and that is described in asset class 00.241, 00.242, 00.26, or 00.27 of Rev. Proc. 87–56, or a converter dolly (converter gear) for which depreciation is determined under § 168.

.02 *Original Tires*. Original tires are the first set of tires installed on a qualifying vehicle acquired by the taxpayer whether or not the vehicle was equipped with tires when acquired.

.03 *Replacement Tires*. Replacement tires are all other tires installed on a qualifying vehicle following acquisition of the vehicle by taxpayer.

SECTION 4. SCOPE

.01 This revenue procedure applies to a taxpayer that has a depreciable interest in its qualifying vehicles and that chooses to account for the cost of original tires and replacement tires for all of its qualifying vehicles under the original tire capitalization method described in section 5 of this revenue procedure.

.02 A taxpayer that chooses not to account for the cost of original tires and replacement tires for all of its qualifying vehicles under the original tire capitalization method described in section 5 of this revenue procedure must account for the cost of these tires in accordance with section 2.03 of this revenue procedure.

SECTION 5. ORIGINAL TIRE CAPITALIZATION METHOD

.01 *In General*. Under the original tire capitalization method, a qualifying vehicle's tires are treated as part of the vehicle and not as separate assets. In addition, under the original tire capitalization method, the rotation of a tire from one vehicle to another (for example, from a tractor to a trailer) is not treated as a change in use within the meaning of § 168(i)(5). A taxpayer that uses the original tire capitalization method described in this section must use this method for the original and replacement tires of all of its qualifying vehicles.

.02 *Description of Method*. Under the original tire capitalization method, a taxpayer:

(1) must capitalize the cost of the original tires of a qualifying vehicle and depreciate these tires under § 168 by using the same depreciation method, recovery period, and convention applicable to the vehicle on which the tires are first installed;

(2) must treat the original tires of the qualifying vehicle as being disposed of at the same time the vehicle on which the tires were first installed is disposed of by the taxpayer; and

(3) must deduct the cost of the replacement tires of the qualifying vehicle as an expense in the taxable year the replacement tires are installed on the vehicle by the taxpayer.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *In General*. A change in a taxpayer's treatment of the cost of a qualifying vehicle's original tires and replacement tires is a change in method of accounting to which §§ 446 and 481 apply.

.02 *Issue Not Under Consideration or Not Pending*. If a taxpayer within the scope of this revenue procedure wants to change to the original tire capitalization method for its first or second taxable year ending on or after December 31, 2001, (year of change) and the treatment of its qualifying vehicle's original tires or replacement tires is not an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002–9, 2002–3 I.R.B. 327, as modified by Rev. Proc. 2002–19, 2002–13 I.R.B. 696, and as modified and clarified by Announcement 2002–17, 2002–8 I.R.B. 561), or is not an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002–9 (or its successor) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. If the taxpayer is under examination, before an area appeals office, or before a federal court regarding any income tax issue other than the treatment of its qualifying vehicle's original tires or replacement tires, the taxpayer must provide a copy of the Form 3115, *Application for Change in Accounting Method*, to the examining officer, appeals officer, or government counsel (whichever is applicable) at the same time it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining officer, appeals officer, or government counsel, as appropriate.

(2) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002–9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: "Automatic Change Filed Under Rev. Proc. 2002–27." This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue procedure.

(3) The change to the original tire capitalization method will be made using a "cut-off method." Under the cut-off method, only a qualifying vehicle's original and replacement tires placed in service by a taxpayer on or after the beginning of the year of change are accounted for under the original tire capitalization method. A qualifying vehicle's original and replacement tires placed in service by the taxpayer before the year of change continue to be accounted for under the taxpayer's former method of accounting. Because no items are duplicated or omitted from income when the cut-off method is used to effect a change in accounting method, no § 481(a) adjustment is necessary.

.03 *Issue Under Consideration or Issue Pending*. If a taxpayer within the scope of this revenue procedure wants to change to the original tire capitalization method for its year of change (as defined in section 6.02 of this revenue procedure) and the treatment of its qualifying vehicle's original tires or replacement tires is an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002–9), or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002–9 (or its successor) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. The taxpayer must provide a copy of the Form 3115 to the examining officer, appeals officer, or government counsel (whichever is applicable) at the same time it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining officer, appeals officer, or government counsel, as appropriate.

(2) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002–9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: "Automatic Change Filed Under Rev. Proc. 2002–27." This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue procedure.

(3) The change to the original tire capitalization method will be made using a cut-off method. Under the cut-off method, only a qualifying vehicle's original and replacement tires placed in service by a taxpayer on or after the beginning of the year of change are accounted for under the original tire capitalization method. A qualifying vehicle's original and replacement tires placed in service by the taxpayer before the year of change continue to be accounted for under the taxpayer's former method of accounting. But see section 6.03(4) of this revenue procedure. Because no items are duplicated or omitted from income when the cut-off method is used to effect a change in accounting method, no § 481(a) adjustment is necessary.

(4) Section 7 of Rev. Proc. 2002–9 does not apply. The taxpayer does not receive audit protection in connection with a change to the original tire capitalization method. Accordingly, the Service may require the taxpayer to change its method of accounting for a qualifying vehicle's original and replacement tires for any taxable year before the year of change.

.04 *Special Rule for Certain Taxpayers with Issue Under Consideration or Issue Pending*. If a taxpayer is within the scope of this revenue procedure and the treatment of its qualifying vehicle's original tires or replacement tires is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002–9) in examination, before an area appeals office, or before the Tax Court, or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer may change to the original tire capitalization method for its first or second taxable year ending on or after December 31, 2001, under section 6.03 of this revenue procedure or, alternatively, for an earlier taxable year under section 7 of this revenue procedure. See also section 6.05 of this revenue procedure for deemed consent situations.

.05 *Special Rule for Certain Taxpayers Deemed to Have Obtained Consent*. A taxpayer within the scope of this revenue procedure will be deemed to have obtained the consent of the Commissioner to change to the original tire capitalization method (as described in section 5 of this revenue procedure) for all of its qualifying vehicles' original tires and replacement tires placed in service before the year of change (as defined in section 6.02 of this revenue procedure) if: (1) the taxpayer treated these tires in the same manner as permitted under the original tire capitalization method in all taxable years since the tires were placed in service by the taxpayer; or (2) the taxpayer changed its treatment of these tires in a taxable year ending on or before December 31, 2001, for which an original federal income tax return has been filed as of April 3, 2002, to the original tire capitalization method, with or without a § 481(a) adjustment, and treated the tires under that method in all taxable years since the taxpayer changed to the original tire capitalization method. Any taxpayer described in this section 6.05 will be deemed to have obtained the consent of the Commissioner to change to the original tire capitalization method as of the beginning of the first taxable year in which the taxpayer used the original tire capitalization method, and is not required to file a Form 3115 under this section 6.

However, if the taxpayer's treatment of its qualifying vehicle's original tires or replacement tires is an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002–9), or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer does not receive audit protection in connection with the change to the original tire capitalization method. Accordingly, the Service may require the taxpayer to change its method of accounting for a qualifying vehicle's original and replacement tires for any taxable year before the first taxable year in which the taxpayer used the original tire capitalization method. The procedures in section 7 of this revenue procedure apply for any taxable year before the first taxable year in which the taxpayer used the original tire capitalization method if the taxpayer's treatment of its qualifying vehicle's original tires or replacement tires is an issue under consideration in examination, before an area

appeals office, or before the Tax Court, or is an issue pending in examination, on April 3, 2002.

.06 *Changes Not Made under this Revenue Procedure*. A taxpayer that wants to change to the original tire capitalization method described in section 5 of this revenue procedure that does not change its method of accounting under section 6 or 7 of this revenue procedure must follow the change in method of accounting provisions in Rev. Proc. 2002–9 (or any successor). This change must be made with a § 481(a) adjustment.

SECTION 7. OPTIONAL SETTLEMENT FOR TAXPAYERS UNDER EXAMINATION, BEFORE AN AREA APPEALS OFFICE, OR BEFORE THE TAX COURT

.01 *In General*. If a taxpayer is within the scope of this revenue procedure, the treatment of the cost of its qualifying vehicles' original tires or replacement tires is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002–9) in examination, before an area appeals office, or before the Tax Court, or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, and the taxpayer does not change to the original tire capitalization method under section 6.03 of this revenue procedure, the Service offers to settle the original and replacement tires issue by changing the taxpayer's method of accounting for the cost of original and replacement tires to the original tire capitalization method in the earliest open taxable year after which there is no closed taxable year.

.02 *Terms of Settlement*.

(1) The Service will change the taxpayer's method of accounting for the cost of original and replacement tires to the original tire capitalization method described in section 5 of this revenue procedure.

(2) The change to the original tire capitalization method will be made using a cut-off method in the earliest open taxable year after which there is no closed taxable year.

(3) The taxpayer must reflect the settlement on its federal income tax returns for any affected succeeding taxable years. For example, an amount required to be capitalized during a taxable year covered by the settlement should be depreciated in that taxable year and in affected succeeding taxable years (whether or not covered by the settlement) in accordance with the taxpayer's method of accounting for depreciation.

(4) The Service will not require the taxpayer to change its method of accounting for the cost of its qualifying vehicles' original and replacement tires to a method other than the original tire capitalization method for any taxable year for which a federal income tax return has been filed as of the date of the closing agreement or other appropriate settlement agreement, provided that:

(a) the taxpayer has complied with all the applicable provisions of the closing agreement or other appropriate settlement agreement;

(b) there has been no taxpayer fraud, malfeasance, or misrepresentation of a material fact;

(c) there has been no change in the material facts on which the closing agreement or other appropriate settlement agreement was based; and

(d) there has been no change in the applicable law on which the closing agreement or other appropriate settlement agreement was based.

(5) The taxpayer must execute a closing agreement under § 7121 or other appropriate settlement agreement as described in section 7.05 of this revenue procedure.

.03 *Procedures for Requesting the Settlement*.

(1) *Initiating the request*.

(a) *Taxable years under examination or in Appeals*. A taxpayer that wants to request a settlement under this section for taxable years under examination or in Appeals must submit its request in writing to the first line examination manager or appeals officer (whichever is applicable) on or before September 3, 2002.

(b) *Taxable years before the Tax Court*. A taxpayer that wants to request a settlement under this section for taxable years before the Tax Court must submit its request in writing to the Chief Counsel attorney assigned to the case on or before the earlier of September 3, 2002, or the date that is 30 days before the date the case is first set for trial, which is the date scheduled for the calendar call.

(2) *Statement of facts, law, and arguments*. The request for settlement must include the following information:

(a) the taxpayer's name, address, telephone number, and taxpayer identification number;

(b) the taxable years covered by the proposed settlement;

(c) the taxpayer's earliest open taxable year after which there is no closed taxable year;

(d) the taxpayer's current method of accounting for the cost of its qualifying vehicles' original and replacement tires; and

(e) a statement of the material facts, including the capitalized amount and the deductible amount computed under the original tire capitalization method for each taxable year under examination, before an area appeals office, or before the Tax Court, and an explanation of the computations used to determine those amounts.

(3) *Perjury statement*. The request for settlement must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete." This declaration must be signed by, or on behalf of, the taxpayer by an individual with the authority to bind the taxpayer in these matters. The declaration may not be signed by the taxpayer's representative.

.04 *Procedures for Processing the Request*.

(1) *Receipt of request acknowledged*. The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will acknowledge receipt of the taxpayer's request for settlement in writing within 15 business days of receipt.

(2) *Factual development*. The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will contact the taxpayer to discuss any questions the Service may have, or ask for additional information believed to be necessary to execute the settlement (for example, to verify the correctness of the taxpayer's information).

(3) *Acceptance*. The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will accept the taxpayer's request for settlement if the request complies with the applicable terms of this revenue procedure. For taxable years before the Tax Court, the settlement is subject to the approval of the Court.

(4) *Notification of acceptance*. The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will notify the taxpayer in writing when the Service agrees to the settlement requested by the taxpayer.

.05 *Procedures for Implementing the Settlement*.

(1) *Closing agreement or other appropriate settlement agreement required*. A taxpayer implementing a settlement is required to execute a closing agreement under § 7121 or other appropriate settlement agreement.

(2) *Contents of closing agreement or other appropriate settlement*. A closing agreement must comply with the requirements of Rev. Proc. 68–16 (1968–1 C.B. 770) and must be substantially in the form set forth in the APPENDIX of this revenue procedure. Settlement agreements in cases pending before the Tax Court must conform substantially to the provisions set forth in the APPENDIX of this revenue procedure and must conform to the rules and procedures of the Tax Court.

(3) *Review and execution of closing agreement or other appropriate settlement*.

(a) *Taxpayers under examination*. The first line examination manager will prepare a closing agreement. The first line examination manager should submit the closing agreement to the appropriate Territory Manager (LMSB) or Territory Manager, Compliance (SB/SE) (whichever is applicable) and his or her assigned counsel for review prior to submitting the closing agreement to the taxpayer for execution. Failure by the examination manager to submit the closing agreement to the Territory Manager or his or her assigned counsel for review will not invalidate the closing agreement. After the closing agreement has been executed by the taxpayer, it will be executed on behalf of the Service by the appropriate Director, Field Operations (LMSB) or Area Director, Field Compliance (SB/SE) (whichever is applicable).

(b) *Taxpayers before an area appeals office*. The appeals officer or appeals team case leader will prepare a closing agreement. After the closing agreement has been executed by the taxpayer, it will be executed on behalf of the Service by an authorized official from Appeals.

(c) *Taxpayers before the Tax Court*. For docketed taxable years before the Tax Court, the taxpayer and the Chief Counsel attorney must prepare an appropriate settlement document, settlement stipulation, or stipulated decision document, pursuant to the rules and procedures of the court. The settlement document, settlement stipulation, or stipulated decision document is subject to the approval of the court.

(4) *Amended returns*.

(a) *In general*. In cases pending before examination or appeals, the Service will make the adjustments necessary to reflect the settlement to the taxpayer's returns for the taxable years under examination or before an area appeals office. In cases pending before the Tax Court, the settlement agreement will include adjustments necessary to reflect the settlement with respect to the year(s) before the court. The taxpayer is required to file amended returns to reflect the settlement for any other affected taxable years for which a federal income tax return has been filed as of the date of the closing agreement or other appropriate settlement agreement. The amended returns must include the adjustments to taxable income necessary to reflect the new method and any collateral adjustments to taxable income or tax liability resulting from the change. A taxpayer eligible to file a qualified amended return under Rev. Proc. 94–69 (1994–2 C.B. 804) may satisfy the requirements of this section by filing a qualified amended return in accordance with that revenue procedure.

(b) *Time and manner*. The taxpayer must file any required amended returns prior to the date it executes the closing agreement or other appropriate settlement agreement. The taxpayer must provide a copy of the amended returns to the first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) before the closing agreement or other appropriate settlement agreement is executed.

.06 *Effect on Other Offices of the Service*. If a taxpayer is before an area appeals office or the Tax Court regarding the treatment of the cost of its qualifying vehicles' original and replacement tires and does not settle this issue under the provisions of this section 7, an appropriate representative from an area appeals office or Chief Counsel office may settle a particular taxpayer's case involving this issue on a more favorable or less favorable basis than provided in this revenue procedure. For example, an appeals officer may settle a case based on the hazards of litigation.

SECTION 8. EFFECTIVE DATE

01. *In general*. This revenue procedure is effective for taxable years ending on or after December 31, 2001.

02. *Form 3115 pending with the Service*. If a taxpayer filed a Form 3115 with the national office to make the change in method of accounting authorized by this revenue procedure, and this Form 3115 is pending with the national office on April 3, 2002, the taxpayer may make the change under this revenue procedure. However, the national office will process the Form 3115 in accordance with the authority under which it was filed unless the taxpayer notifies the national office by July 2, 2002, that it intends to make the method change under this revenue procedure. If the taxpayer timely notifies the national office that it wants to make the method change under this revenue procedure, any user fee submitted with the Form 3115 will be returned to the taxpayer.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9 is modified and amplified to include this accounting method change in section 2 of the APPENDIX.

DRAFTING INFORMATION

The principal author of this revenue procedure is Mark Pitzer of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Charlotte Chyr at (202) 622–3110 (not a toll-free call).

APPENDIX

Department of the Treasury Internal Revenue Service

Closing Agreement on Final Determination Covering Specific Matters

Under § 7121 of the Internal Revenue Code, [*insert taxpayer's name, address, telephone number, and identifying number*] ("the taxpayer") and the Commissioner of Internal Revenue ("the Commissioner") make the following closing agreement:

WHEREAS:

1. The accounting method issue covered by this closing agreement is the taxpayer's method of accounting for the cost of its qualifying vehicles' original and replacement tires. The definitions of qualifying vehicle, original tires, and replacement tires set forth in section 3 of Rev. Proc. 2002–27, apply for purposes of this closing agreement.

2. The taxable year(s) covered by this closing agreement are [*insert applicable taxable year(s) covered by the agreement*].

3. Under the taxpayer's present method of accounting for the cost of its qualifying vehicles' original and replacement tires, the taxpayer [*describe in detail the taxpayer's current method of accounting being changed: for example, "deducts the cost of its qualifying vehicles' original and replacement tires when purchased"*].

4. The taxpayer and the Commissioner relied on the following facts and representations in making this closing agreement: [*insert relevant facts, including the amounts capitalized or deducted under the original tire capitalization method for each taxable year under examination, before an area appeals office, or before the Tax Court, an explanation of the computations used to determine those amounts, and a statement of whether the amounts capitalized or deducted for each of those taxable years is taken into account for federal income tax purposes*].

5. [*If applicable, insert:*] The taxpayer has filed an amended return(s) for the taxable year(s) ended [*insert applicable affected succeeding taxable year(s) for which a federal income tax return has been filed as of the date of the closing agreement*] to reflect the change in method of accounting for the cost of the qualifying vehicles' original and replacement tires described in this closing agreement.

6. [*If applicable, insert:*] A stipulated decision has been entered by the [*insert name of federal court*] with respect to the taxable year(s) ended [*insert date(s)*] that reflects taxable income for such year(s) computed using the original tire capitalization method described in section 5 of Rev. Proc. 2002–27 for the cost of the qualifying vehicles' original and replacement tires.

NOW IT IS HEREBY DETERMINED AND AGREED for federal income tax purposes:

1. That the Service is changing the taxpayer's method of accounting for the cost of its qualifying vehicles' original and replacement tires to the original tire capitalization method of accounting described in section 5 of Rev. Proc. 2002–27, for the taxable year ended [*insert earliest open taxable year after which there is no closed taxable year*].

2. That the change in method of accounting is to be made on a cut-off basis.

3. That the adjustment(s) to tax attributable to the adjustment(s) to taxable income resulting from the change in the method of accounting for the cost of the qualifying vehicles' original and replacement tires (including the current year adjustment(s) and any collateral adjustments to taxable income or tax liability resulting from the change) for each taxable year covered by the closing agreement are as follows: [*insert the adjustments to each taxable year covered by the closing agreement in table form*].

4. That the change in method of accounting for the cost of the qualifying vehicles' original and replacement tires is a change in method of accounting within the meaning of Rev. Proc. 2002–27. As such, the provisions of § 446 and the regulations thereunder apply to the original tire capitalization method of accounting described in section 5 of Rev. Proc. 2002–27 for the cost of the qualifying vehicles' original and replacement tires.

5. That, under section 7.02(4) of Rev. Proc. 2002–27, the Service will not require the taxpayer to change its method of accounting for the cost of its qualifying vehicles' original and replacement tires to a method other than the original tire capitalization method for [*insert taxable year(s) for which a federal income tax return has been filed as of the date of this closing agreement*], provided that: (a) the taxpayer has complied with all the applicable provisions of this closing agreement; (b) there has been no taxpayer fraud, malfeasance, or misrepresentation of a material fact; (c) there has been no change in the material facts on which this closing agreement was based; and (d) there has been no change in the applicable law on which this closing agreement was based.

6. That the Service is not precluded from challenging the computation of the amounts capitalized or deducted for any taxable year covered by this closing agreement on a basis unrelated to the original tire capitalization method (for example, that all or a portion of the cost of a qualifying vehicle's original or replacement tires is not incurred under § 461).

7. [*If applicable, insert:*] That the following additional conditions also apply: [*insert, for example, conditions with respect to waiving restrictions on assessment and collection, paying any tax, abating any overassessment, or refunding or crediting any tax overpayment*].

8. That the taxpayer accepts this settlement and agrees to the applicable terms of Rev. Proc. 2002–27.

This agreement is final and conclusive except:

(1) The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

(2) It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and

(3) If it relates to a tax period ending after the date of this agreement, it is subject to any law enacted after the agreement date, that applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this document.

Taxpayer (other than individual):

By: _____ Date:_____
Title:_____

Commissioner of Internal Revenue:

By:_____ Date:_____
Title:_____

Instructions

This agreement must be signed and filed in triplicate. (All copies must have original signatures.) The original and copies of the agreement must be identical. The name of the taxpayer must be stated accurately. The agreement may relate to one or more years.

If an attorney or agent signs the agreement for the taxpayer, the power of attorney (or a copy) authorizing that person to sign must be attached to the agreement.

If the taxpayer is a corporation, the agreement must be dated and signed with the name of the corporation, the signature and title of an authorized officer or officers, or the signature of an authorized attorney or agent. It is not necessary that a copy of an enabling corporate resolution be attached.

Use additional pages if necessary and identify them as part of this agreement.

Please see Rev. Proc. 68–16 (1968–1 C.B. 770) for a detailed description of practices and procedures applicable to most closing agreements.